IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1828 OF 2003

Saraswat Brahim Social Club, Solapur ...Petitioner

Versus

The Joint Charity Commissioner,
Latur Region, Latur. ...Respondent

Shri T.D.Deshmukh i/b Shri A.A.Kumbhakoni for the Petitioner.
None for the Respondent.

CORAM : S.C. DHARMADHIKARI, J.
DATE : JANUARY 10, 2006.

P.C.:

1. Heard Shri Deshmukh for the petitioner. Perused with his assistance, the petition and the annexures thereto including an order passed by the learned Joint Charity Commissioner. Shri Deshmukh submits that the Joint Charity Commissioner proceeds on the misconception that the agreement dated 3rd December, 1992 (Exh.D) is an agreement for sale and therefore, prior sanction order under Section 36(1) of the Bombay Public Trusts Act,1950 is necessary. He submits that on the own showing of the parties it is a development agreement and that agreement postulates upon the terms and conditions thereof being complied with, a conveyance/sale-deed would be executed by the Trust as a consenting party. It is that

deed/conveyance which would require prior sanction and not the development agreement itself. In these circumstances, according to him, the issue as to whether the Joint Charity Commissioner can grant ex-post-facto sanction or not, would not arise at all.

2. In the light of this submission of Shri Deshmukh and considering that the Trust itself terms these documents as not creating right, title or interest in favour of the party at this stage but at a subsequent stage when the documents creating such rights would be executed, application before the Charity Commissioner was not necessary. That application is allowed to be withdrawn at the instance of the petitioner-Trust. Needless to state that as and when the eventuality under Section 36(1) of the Bombay Public Trusts Act, 1950 arises and the property belonging to the Trust is being alienated, it would be open to the Trust to approach the Charity Commissioner afresh and the said application would be determined and decided on its own merits and in accordance with law, un-influenced by the withdrawing or disposal of the earlier application. Petition disposed of.

(S.C.DHARMADHIKARI,J.)